

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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JOEL F. HOLUBAR, and
MARIANA H. HOLUBAR,

Plaintiffs,

v.

Civil Action No. 03 CV 12404 (NG)

KENT KHOLBERGER; THE CHASE
FREEDMAN-FAMILY TRUST and
M/Y CHEROSA, *in rem*,

Defendants.
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**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION FOR AN ORDER COMPELLING DISCOVERY**

Defendants, Kent Kohlberger (hereinafter "Kohlberger"), The Chase-Freedman Family Trust (hereinafter the "Trust") and M/Y CHEROSA, *in rem* (hereinafter the "Vessel") make their Motion pursuant to Federal Rule of Civil Procedure 37 and Local Rule 37.1.

Federal Rule of Civil Procedure 37 provides in pertinent part that:

If a deponent fails to answer a question propounded or submitted under Rule[] 30 . . . or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling inspection in accordance with the request.

FED. R. CIV. P. 37(a)(2)(B).

Plaintiffs have failed to produce a single document in response to Defendants' May 6, 2004, Request for Production of Documents. Plaintiffs' Counsel, Bjorn Holubar, has promised Defendants' lead counsel, Edward Radzik, on repeated occasions, to produce documents substantiating its claims, and has repeatedly failed to produce a single document. Nearly four

months have elapsed since the documents were requested and the Court's discovery deadline is September 3, 2004.¹ Thus, pursuant to Federal Rule of Civil Procedure 37(a)(2)(B), Defendants are entitled to an Order compelling Plaintiffs to produce all requested and promised documents.

Also, answers to Plaintiffs, Rule 33 Interrogatories were never properly served on Defendants. Further, Defendants' *Revised* Interrogatories were never answered. Thus, pursuant to Rule 37(a)(2)(B), Defendants are entitled to an Order compelling Plaintiffs to serve proper responses to Defendants Revised Interrogatories, which were served on Plaintiffs' counsel on June 3, 2004, by Federal Express.

Additionally, neither Joel F. Holubar nor Mariana Holubar have been produced for deposition. Thus, pursuant to 37(a)(2)(B), Defendants are entitled to an Order compelling both Plaintiffs to appear for deposition at a reasonable time *after* the requested documents have been produced.

Lastly, Local Rule 37.1 requires that the parties "confer in good faith to narrow the areas of disagreement to the greatest possible extent." Mr. Radzik's has complied with Rule 37.1 by conferring with Plaintiffs' counsel several times seeking to resolve the instant discovery disputes. Plaintiffs' counsel has promised on numerous occasions to produce requested discovery and continuously, and seemingly intentionally, failed to produce the requested discovery. Thus, given the foregoing, and that Defendants' counsel have complied with the Local Rule, Defendants are entitled to an Order compelling discovery pursuant to Local Rule 37.1.

¹The Court's July 16, 2004 Scheduling Order provided that fact discovery was to be completed by September 3, 2004.

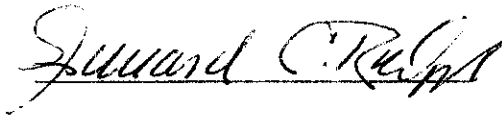
Conclusion

Defendants respectfully assert that their Motion for an Order Compelling Discovery should be granted and that Defendants should be awarded the reasonable expenses incurred in making the Motion.

Date: September 1, 2004

Respectfully submitted,

Kent Kohlberger, the Chase -Freedman Family
Trust, and the M/Y CHEROSA, *in rem*,
by its attorneys,



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Certificate of Service

I certify that on this 1st day of September, 2004, I served a copy of the above document on counsel for Plaintiffs as indicated below by Express Mail:

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